



House of Representatives

File No. 831

General Assembly

January Session, 2005

(Reprint of File No. 289)

Substitute House Bill No. 6639
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
June 3, 2005

**AN ACT CONCERNING OFFSETS AGAINST DISABILITY
RETIREMENT BENEFITS FOR STATE EMPLOYEES AND STRESS-
RELATED WORKERS' COMPENSATION BENEFITS FOR POLICE
OFFICERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (c) of section 5-170 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2005*):

4 (c) Retirement income payments shall not be reduced: (1) For a
5 member receiving a specific indemnity award under section 31-307 or
6 31-308; (2) for a member who received a judgment for personal injuries
7 and pain and suffering under the provisions of section 31-293,
8 provided [he] the member has reimbursed the state in full for all sums
9 expended by it under chapter 568; or (3) by the amount of any
10 attorney's fees a member incurs to obtain benefits under the Workers'
11 Compensation Act or federal Social Security disability benefits.

12 Sec. 2. Subsection (d) of section 5-192p of the general statutes is

13 repealed and the following is substituted in lieu thereof (*Effective July*
14 *1, 2005*):

15 (d) Notwithstanding the provisions of subsection (c) of this section,
16 the following maximum benefit limitation shall apply. In order to
17 verify the operation of the maximums, it shall be a condition precedent
18 to receipt of any disability benefits under this section that a member
19 authorize the Social Security Administration to provide the Retirement
20 Commission, on an ongoing basis, any information with regard to
21 covered earnings or Social Security benefits payable. In the event both
22 of the maximums indicated below apply, the lesser disability benefit
23 shall be payable. Such maximums shall be subject to reexamination
24 annually, as indicated in subsection (e) of this section.

25 (1) The disability benefit provided under this subsection shall not
26 exceed (A) one hundred per cent of the member's final average
27 earnings or the rate of salary of the member on date of disability,
28 whichever is greater, less (B) any periodic cash benefit payments being
29 made to a member under the Workers' Compensation Act, less (C) any
30 federal disability Social Security benefits both primary and family paid
31 on account of the member's Social Security earnings history, less (D) all
32 outside earned salary or wages unless the Retirement Commission
33 determines that such salary or wages are being paid as part of the
34 rehabilitation of the disabled member. Any such determination that
35 such earned salary or wages is for rehabilitation must be reapproved
36 by the Retirement Commission no less frequently than every eighteen
37 months, or the offset shall apply. The offset for workers' compensation
38 and federal Social Security disability benefits shall apply when such
39 benefits commence even if such benefits initially commence after the
40 member's disability retirement date.

41 (2) The disability benefit provided under this subsection shall not
42 exceed (A) eighty per cent of the greater of the member's final average
43 earnings or the rate of salary of the member on the date of disability,
44 less (B) any periodic cash benefit payments being made to a member
45 under the Workers' Compensation Act, less (C) any federal disability

46 Social Security benefits, both primary and family being paid on
47 account of the member's Social Security earnings history. The offsets
48 shall apply when such benefits commence even if such benefits
49 initially commence after the member's disability retirement date.

50 (3) The offsets for workers' compensation and federal Social Security
51 disability benefits shall be reduced by the amount of any attorney's
52 fees a member incurs to obtain such benefits.

53 Sec. 3. Subsection (g) of section 5-169 of the general statutes is
54 repealed and the following is substituted in lieu thereof (*Effective July*
55 *1, 2005*):

56 (g) Twenty per cent of all outside earned salary or wages shall be
57 offset against the disability retirement payments by the state during
58 the first two years of disability. On or after October 1, 1987, at the
59 expiration of such period, if the total disability benefits and outside
60 earnings exceed one hundred per cent of the pay of such member at
61 the date of disability, adjusted annually by a percentage increase equal
62 to the cost of living allowances applied to the member's disability
63 retirement benefits pursuant to this chapter, the disability payment
64 will be reduced by the amount such total exceeds such adjusted
65 earnings. Notwithstanding the foregoing provisions of this section, the
66 following maximum benefit limitations shall apply if the member's
67 date of disability occurs on or after January 1, 1984. Such maximum
68 benefit limitations shall apply coincident with the receipt of benefits
69 under subsection (d) of section 5-142 by any member of the Division of
70 State Police within the Department of Public Safety. To verify the
71 operation of the maximums, members shall authorize the Social
72 Security Administration to provide the Retirement Commission, on an
73 ongoing basis, any information with regard to covered earnings or
74 Social Security benefits payable. In the event both of the maximums
75 indicated below apply, the lesser disability benefit shall be payable.
76 Such maximums shall be subject to reexamination annually, as
77 indicated in subsection (h) of this section.

78 (1) The disability benefit provided under this section shall not
79 exceed one hundred per cent of the member's base salary or the rate of
80 salary of the member on his date of disability, whichever is greater,
81 less any periodic cash benefit payments being made to a member
82 under the Workers' Compensation Act, less any federal disability
83 Social Security benefits, including primary and family, paid on account
84 of the member's Social Security earnings history, less all outside earned
85 salary or wages, unless the Retirement Commission determines that
86 such salary or wages are being paid as part of the rehabilitation of the
87 disabled member. Any such determination that such earned salary or
88 wages is for rehabilitation must be reapproved by the Retirement
89 Commission no less frequently than every eighteen months, or the
90 offset shall apply. The offset for workers' compensation and federal
91 Social Security disability benefits shall apply when such benefits
92 commence even if such benefits initially commence after the member's
93 disability retirement date.

94 (2) The disability benefit provided under this section shall not
95 exceed eighty per cent of the member's base salary or the rate of salary
96 of the member on the date of disability, whichever is greater, less any
97 periodic cash benefit payments being made to a member under the
98 Workers' Compensation Act, less any federal disability Social Security
99 benefits, including primary and family, being paid on account of the
100 member's Social Security earnings history. The offsets shall apply
101 when such benefits commence even if such benefits initially commence
102 after the member's disability retirement date.

103 (3) The offsets for workers' compensation and federal Social Security
104 disability benefits shall be reduced by the amount of any attorney's
105 fees a member incurs to obtain such benefits.

106 Sec. 4. Subdivision (16) of section 31-275 of the general statutes is
107 repealed and the following is substituted in lieu thereof (*Effective*
108 *October 1, 2005*):

109 (16) (A) "Personal injury" or "injury" includes, in addition to

110 accidental injury [which] that may be definitely located as to the time
111 when and the place where the accident occurred, an injury to an
112 employee [which] that is causally connected with [his] the employee's
113 employment and is the direct result of repetitive trauma or repetitive
114 acts incident to such employment, and occupational disease.

115 (B) "Personal injury" or "injury" shall not be construed to include:

116 (i) An injury to an employee [which] that results from [his] the
117 employee's voluntary participation in any activity the major purpose
118 of which is social or recreational, including, but not limited to, athletic
119 events, parties and picnics, whether or not the employer pays some or
120 all of the cost of such activity;

121 (ii) A mental or emotional impairment, unless such impairment
122 arises (I) from a physical injury or occupational disease, or (II) in the
123 case of a police officer, from such police officer's use of deadly force or
124 subjection to deadly force in the line of duty, regardless of whether
125 such police officer is physically injured, provided such police officer is
126 the subject of an attempt by another person to cause such police officer
127 serious physical injury or death through the use of deadly force, and
128 such police officer reasonably believes such police officer to be the
129 subject of such an attempt. As used in this clause, "police officer"
130 means a member of the Division of State Police within the Department
131 of Public Safety, an organized local police department or a municipal
132 constabulary, and "in the line of duty" means any action that a police
133 officer is obligated or authorized by law, rule, regulation or written
134 condition of employment service to perform, or for which the police
135 officer is compensated by the public entity such officer serves;

136 (iii) A mental or emotional impairment [which] that results from a
137 personnel action, including, but not limited to, a transfer, promotion,
138 demotion or termination; or

139 (iv) Notwithstanding the provisions of [clause (i) of this]
140 subparagraph (B)(i) of this subdivision, "personal injury" or "injury"
141 includes injuries to employees of local or regional boards of education

142 resulting from participation in a school-sponsored activity but does not
 143 include any injury incurred while going to or from such activity. As
 144 used in this clause, "school-sponsored activity" means any activity
 145 sponsored, recognized or authorized by a board of education and
 146 includes activities conducted on or off school property and
 147 "participation" means acting as a chaperone, advisor, supervisor or
 148 instructor at the request of an administrator with supervisory
 149 authority over the employee.

150 Sec. 5. (NEW) (*Effective October 1, 2005*) Notwithstanding any
 151 provision of chapter 568 of the general statutes, workers' compensation
 152 benefits for any police officer, as defined in subparagraph (B)(ii) of
 153 subdivision (16) of section 31-275 of the general statutes, as amended
 154 by this act, who suffers a mental or emotional impairment arising from
 155 such police officer's use of deadly force or subjection to deadly force in
 156 the line of duty, shall be limited to treatment by a psychologist or a
 157 psychiatrist who is on the approved list of practicing physicians
 158 established by the chairman of the Workers' Compensation
 159 Commission pursuant to section 31-280 of the general statutes.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2005</i>	5-170(c)
Sec. 2	<i>July 1, 2005</i>	5-192p(d)
Sec. 3	<i>July 1, 2005</i>	5-169(g)
Sec. 4	<i>October 1, 2005</i>	31-275(16)
Sec. 5	<i>October 1, 2005</i>	New section

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 06 \$	FY 07 \$
Comptroller Misc. Accounts (Fringe Benefits)	State Employees Retirement Fund - Cost	Indeterminate	Indeterminate
Public Safety, Dept.	GF - Cost	See Below	See Below

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 06 \$	FY 07 \$
All Municipalities	STATE MANDATE - Cost	See Below	See Below

Explanation

The bill specifies that offsets against state disability retirement benefits are to be reduced by the amount of any attorney's fees a member incurs to obtain benefits. Qualifying state retirees will receive increased disability retirement benefits as a result of the bill. Data regarding the average size of awards and the associated attorney's fees is not available, therefore, the increased benefit cost cannot be estimated at this time.

The exact impact of the benefits increase on the unfunded liability of the State Employees Retirement Fund and the state's contribution to the retirement system must be calculated by the State Employees Retirement System actuary. State employee retirement benefits are a mandatory subject of collective bargaining.

The bill also expands workers' compensation coverage for state and local police to include counseling for mental and emotional impairments for officers who use deadly force, or are the target of the

attempted use of deadly force. Under the bill, police officers are eligible for counseling under workers' compensation even if no physical injury occurs from using, or being subject to, deadly force. Under current law, mental and emotional injuries are compensable only if they result from a physical injury.

This bill will result in additional costs to the state and municipalities. The extent of these costs depends on the number of workers' compensation claims filed for counseling for mental or emotional impairments. The number of cases where a police officer incurs only mental or emotional injuries as a result of being subject to deadly force is not known.

There are approximately 8,000 sworn police officers in the state; 1,200 of which are state troopers. In 2002, 707 state and municipal law enforcement officers reported being assaulted, with 275 officers reporting no injuries. Weapons were used in approximately 111 of the assaults.¹

The workers' compensation fee schedule indicates that the cost of an initial psychological interview and exam is \$185 and each follow-up visit is \$126. A police officer could require multiple sessions, potentially costing several thousand dollars. It is possible that police officers would receive mental or emotional counseling through their state or municipal health insurance plans, or employee assistance programs. This is not as likely as the police officer's health insurance plan, for example, may limit the number of counseling sessions and charge a co-pay.

While it is anticipated that there will be an increase in the number of cases brought before the Workers' Compensation Commission, this will not result in the need for an additional appropriation.

This bill is a state mandate on municipalities, particularly to those

¹ Most recent data available from the Department of Public Safety's 2002 Crime in Connecticut Annual Report - Uniform Crime Reports.

municipalities that are self-insured.

House “A” expands workers’ compensation coverage for state and local police to include counseling for mental and emotional impairments for officers who use deadly force, or are the target of the attempted use of deadly force. House “A” results in additional costs to the state and municipalities as described above. House “A” is a state mandate on municipalities.

OLR Bill Analysis

sHB 6639 (as amended by House "A")*

AN ACT CONCERNING OFFSETS AGAINST DISABILITY RETIREMENT BENEFITS FOR STATE EMPLOYEES**SUMMARY:**

This bill prohibits the state from reducing a state retiree's disability retirement benefit by the amount of attorney's fees the retiree incurs to obtain workers' compensation or federal Social Security disability benefits. Thus, attorney's fees will be removed from the benefit total before the state uses the benefit to offset (reduce) the state disability retirement. The bill adds this provision to the Tier I and Tier II state employee retirement plans.

The bill also expands workers' compensation coverage for a police officer who uses deadly force or is the target of the attempted use of deadly force while in the line of duty. An officer subjected to attempted deadly force must reasonably believe he was at risk of physical injury from its use. Under current law, mental and emotional injuries are compensable for police (or any other employee) only if they arise from a physical injury. It also limits who can treat these injuries.

*House Amendment "A" adds the workers' compensation benefit for police officers' mental and emotional injuries.

EFFECTIVE DATE: July 1, 2005

POLICE OFFICER STRESS BENEFITS

Under the bill, a police officer acts within the line of duty when he does what he is required, authorized, or paid to do. The bill defines "police officer" as a (1) state or local police officer or (2) a municipal constable.

The bill specifies that employees eligible for workers' compensation under the bill may only receive treatment by a practicing psychologist

or psychiatrist on an approved list established by the Workers' Compensation Commission chairman pursuant to law.

BACKGROUND

Legislative History

On April 22, the House referred the bill (File 289) to the Appropriations Committee, which gave it joint favorable report on May 2.

Retirement Benefits and Collective Bargaining

State employee pensions are a mandatory subject for collective bargaining and, by law, state employee contract provisions supersede contrary provisions of state law. Since the current pension contract does not expire until July 1, 2017, any changes in the law enacted by the General Assembly technically should not take effect before that date without the consent of the state employees union coalition. Despite this, the legislature and the governor occasionally enact law, such as with the 2003 Early Retirement Incentive Program, without negotiating first with the state employees union coalition.

State Employee Retirement System

The State Employee Retirement System has three tiers. With some exceptions, employees hired:

1. before July 1, 1984 are in Tier I,
2. on or after July 1, 1984 through June 30, 1997 are in Tier II, and
3. on or after July 1, 1997 are in Tier IIA.

State statutes contain provisions for Tier I and Tier II, but Tier IIA is entirely contained in the state employees union coalition contract.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 13 Nay 0

Appropriations Committee

Joint Favorable Report

Yea 44 Nay 0